

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *R.C. v. A.L.*, 2021 NSFC 3

**Date:** 2021-03-03

**Docket:** 109662

**Registry:** Annapolis Royal

**Between:**

**R.C.**

**Applicant**

**v.**

**A.L**

**Respondent**

**DECISION ON COSTS**

Judge: The Honourable Judge Jean M. Dewolfe

Written Submissions on Applicant – February 22, 2021

Costs : Respondent – February 12, 2021

Written Decision March 3, 2021

On Costs:

Counsel: David Baker, for the Applicant  
Rachel Taylor, for the Respondent

Related Decision: *R.C. v. A.L.*, 2021 NSFC 01

**Introduction:**

[1] This is a costs decision arising from cross applications to vary of child support and special expenses for two children.

[2] The Court provided a written decision on January 12, 2021, following a document hearing with limited cross examination by telephone on December 1, 2020.

**Issue:**

[3] A.L. seeks a \$4,000.00 costs award against R.C. In light of the divided success, R.C. seeks a \$500.00 costs award against A.L.. If the Court is to make a costs award, what is the appropriate amount?

**Background:**

[4] R.C. sought to vary a Consent Order dated December 27, 2019 which set R.C.'s income at \$85,516.00. He argued that as a result of the COVID-19 pandemic his work had ended in Alberta, and he now earned only government benefits of \$2,000.00 per month. He sought to reduce his payments to a level based on \$24,000.00 a year.

[5] A.L. argued that R.C. had been intentionally underemployed since prior to the 2019 Order. She sought to impute full employment income in excess of \$160,000.00 per year to R.C.

[6] The Court imputed \$51,954.00 to R.C. in 2020 until June 2021. The Court rejected A.L.'s argument that full employment income should be imputed, and given her consent to the \$85,516.00 income level upon which the 2019 order was based. The Court added R.C.'s actual income for January and February 2020 to his approximate \$2,000.00 per month government benefits to reach the \$51,954.00 2020 estimated income finding.

[7] The Court also found that R.C. had failed to reduce his costs and/or supplement or replace his income after his work "dried up" in March 2020. He is a highly skilled tradesman with no employment limitations who has a significant asset base. Therefore, the Court imputed income at the 2019 order level (\$85,516.00) commencing July 2021 to allow R.C. to change his employment if necessary.

[8] Both R.C. and A.L. took unreasonable positions on the level of income to be imputed.

[9] A.L. refused to engage in Alternative Dispute Resolution, but this is understandable given the significant concessions she had made prior to and in the 2019 order.

[10] R.C. ceased child support payments in June 2020 and paid nothing to A.L. after that date, despite the government benefits he was receiving. Prior to this, he had refused to pay his share of Section 7 expenses even when he was employed.

[11] A.L. was required to pay for private counsel, whereas R.C. had the advantage of Legal Aid, despite his significantly higher asset position.

[12] A.L. filed an affidavit which required significant revisions on two occasions due to evidentiary objections.

**Law:**

[13] Rule 21 of the *Family Court Rules*, NS Reg. 20/93, provides that:

- 21.01** (1) The amount of costs is awarded at the discretion of the judge.
- (2) Costs may be collected in accordance with the procedure provided for collection of support or in any other manner that the court directs.
- (3) Costs, at the discretion of the court, may be payable to the court, the party, the party's counsel or any other person that the court directs.

[14] In *E.T. v. T.C.*, 2020 NSFC 10, Judge Daley aptly summarized the principles that guide decision making in costs applications:

[17] Some of the more common principles that guide decision making in cost applications...

1. Costs are in the discretion of the court.
2. A successful party is generally entitled to a cost award.
3. A decision not to award costs must be for a “very good reason” and be based on principle.
4. Deference to the best interests of a child, misconduct, oppressive and vexatious conduct, misuse of the court’s time, unnecessarily increasing costs to a party, and failure to disclose information may justify a decision not to award costs to an otherwise successful party or to reduce a cost award.
5. The amount of a party and party cost award should “represent a substantial contribution towards the parties’ reasonable expenses in presenting or defending the proceeding but should not amount to a complete indemnity”.
6. The ability of a party to pay a cost award is a factor that can be considered, but as noted by Judge Dyer in *M.C.Q. v. P.L.T.* 2005 NSFC 27:  
  
Courts are also mindful that some litigants may consciously drag out court cases at little or no actual cost to themselves (because of public or third-party funding) but at a large expense to others who must “pay their own way”. In such cases, fairness may dictate that the successful party’s recovery of costs not be thwarted by later pleas of inability to pay. [See *Muir v. Lipon*, 2004 BCSC 65].
7. The Tariff of Costs and Fees is the first guide used by the Court in determining the appropriate quantum of the cost award.
8. In the first analysis the “amount involved”, required for the application of the tariffs and for the general consideration of quantum, is the dollar amount awarded to the successful party at the Trial. If the Trial did not involve a money amount other factors apply. The nature of matrimonial proceedings may complicate or preclude the determination of the “amount involved”.

9. When determining the “amount involved” proves difficult or impossible the Court may use a “rule of thumb” by equating each day of trial to an amount of \$20,000.00 in order to determine the “amount involved”.

10. If the award determined by the tariff does not represent a substantial contribution towards the parties’ reasonable expenses “it is preferable not to increase artificially the “amount involved”, but rather, to award a lump sum”. However, departure from the tariff should be infrequent.

11. In determining what are “reasonable expenses”, the fees billed to a successful party may be considered but this is only one factor among many to be reviewed.

12. When offers to settle have been exchanged, consider the provisions of the civil procedure rules in relation to offers and also examine the reasonableness of the offer compared to the parties’ position at trial and the ultimate decision of the Court.

**Analysis:**

[15] In this case there was divided success, however, A.L. was more successful than R.C. She caused delay by filing her affidavit without regard to evidentiary rules, and her position was unreasonable in its extent.

[16] However, R.C. was unreasonable in his position and failed to recognize his need to continue to pay a level of support to his children commensurate with his actual 2020 income and his abilities.

[17] In these circumstances, I find it appropriate and necessary to award costs to A.L. based on her substantial success. I can find no “very good reason” to do otherwise. R.C. has a significant asset base and can pay a costs order.

[18] A paper based hearing is similar to a trial and requires comparable preparation and therefore, use of Tariff “A” is appropriate. In this case, A.L.’s counsel submits that Tariff A would result in a \$4,000.00 costs award.

[19] Costs are in the Court’s discretion. In light of the relative success of A.L. and the circumstances described above, the Court awards \$1,500.00 costs to A.L. to be paid by April 30, 2021 through the *Nova Scotia Maintenance Enforcement Program*.

Dewolfe, Jean, JFC